



May 24, 1999

Mr. Paul Sarahan
Director
Litigation Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-1435

Dear Mr. Sarahan:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124485.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for information pertaining to violations concerning "on-site sewage facility installers." You state that much of the requested information will be released to the requestor. You seek to withhold certain other information, a representative sample of which you submitted to this office, pursuant to sections 552.101 and 552.111 of the Government Code.

Section 552.101 of the Government Code protects, *inter alia*, information coming within the "informer's privilege." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance

and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro*, 353 U.S. at 60; *see also* Open Records Decision No. 208 (1978) (informer’s privilege does not apply where informant’s identity is known to individual who is subject of complaint). We have marked the representative sample of documents to indicate the types of information the commission may withhold pursuant to the informer’s privilege. The remaining information contained in those particular documents must be released.

Section 552.111 of the Government Code excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref’d n.r.e.) (emphasis added).

In Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document *that is intended for release in a final form* necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such may be withheld pursuant to the predecessor of section 552.111. The draft documents before us directly pertain to policy matters concerning the commission. Assuming the commission intends to release these documents in their final form, we conclude that the commission may withhold these and similar documents in their entirety pursuant to section 552.111.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

¹In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/eaf

Ref: ID# 124485

encl. Submitted documents

cc: Mr. John R. Blount, PE
Harris County Public Infrastructure
9900 Northwest Freeway, Suite 103
Houston, Texas 77092
(w/o enclosures)